



Entered on Docket
June 27, 2006

Hon. Bruce A. Markell
United States Bankruptcy Judge

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ORDER GRANTING JOINT MOTION OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC, THE OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORIAL CONTRACT RIGHTS THROUGH USA COMMERCIAL MORTGAGE COMPANY, THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, AND THE OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR USA COMMERCIAL MORTGAGE COMPANY PURSUANT TO 11 U.S.C. §§ 105(a), 107(b), 1102(b)(3)(A) AND 1103(c), FOR NUNC PRO TUNC ORDER CLARIFYING REQUIREMENT TO PROVIDE ACCESS TO INFORMATION, AS MODIFIED (AFFECTS ALL DEBTORS)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.)	BK-S-06-10725-LBR Chapter 11
In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.)	BK-S-06-10726-LBR Chapter 11
In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.)	BK-S-06-10727-LBR Chapter 11
In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.)	BK-S-06-10728-LBR Chapter 11
In re: USA SECURITIES, LLC, Debtor.)	BK-S-06-10729-LBR Chapter 11

ORDER GRANTING JOINT MOTION OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC, THE OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORY CONTRACT RIGHTS THROUGH USA COMMERCIAL MORTGAGE COMPANY, THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, AND THE OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR USA COMMERCIAL MORTGAGE COMPANY PURSUANT TO 11 U.S.C. §§ 105(a), 107(b), 1102(b)(3)(A) AND 1103(c), FOR NUNC PRO TUNC ORDER CLARIFYING REQUIREMENT TO PROVIDE ACCESS TO INFORMATION, AS MODIFIED (AFFECTS ALL DEBTORS)

The "Joint Motion Of Official Committee Of Equity Security Holders Of USA Capital First Trust Deed Fund, LLC, The Official Committee Of Holders Of Executory Contract Rights Through USA Commercial Mortgage Company, The Official Committee Of Equity Security Holders Of USA Capital Diversified Trust Deed Fund, LLC, And The Official Unsecured Creditors' Committee For USA Commercial Mortgage Company Pursuant To 11 U.S.C. §§ 105(a), 107(b), 1102(b)(3)(A) And 1103(C), For Nunc Pro Tunc Order Clarifying

1 Requirement To Provide Access To Information" (the "Joint Motion")¹ having come on for
 2 hearing in the above-captioned Court on June 15, 2006 and June 21, 2006; attorneys having
 3 appeared respectively on behalf of the Official Committee of Equity Security Holders of USA
 4 Capital First Trust Deed Fund, LLC (the "First Trust Deed Committee"), the Official Committee
 5 of Holders of Executory Contract Rights through USA Commercial Mortgage Company (the
 6 "Direct Lender Committee"), the Official Committee of Equity Security Holders of USA Capital
 7 Diversified Trust Deed Fund, LLC (the "Diversified Trust Deed Committee"), the Official
 8 Unsecured Creditors' Committee for USA Commercial Mortgage Company (the "Unsecured
 9 Creditors' Committee" and together with the First Trust Deed Committee, the Direct Lender
 10 Committee, and the Diversified Trust Deed Committee, the "Committees"), USA Commercial
 11 Mortgage Company ("USA Mortgage"), USA Securities, LLC ("USA Securities"), USA Capital
 12 Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC ("USA
 13 Diversified"), and USA Capital First Trust Deed Fund, LLC ("USA First" and, collectively with
 14 USA Mortgage, USA Securities, USA Realty, and USA Diversified, the "Debtors"), and other
 15 appearances having been made on the record; the Court having considered the Joint Motion, the
 16 responses and oppositions thereto, and the Committees' joint reply to such responses and
 17 oppositions (the "Joint Reply"); appropriate notice and opportunity for a hearing on the Joint
 18 Motion having been given; the relief requested in the Joint Motion being in the best interests of
 19 the Debtors, their estates, and their creditors and equity security interest holders; this Court
 20 having jurisdiction to grant the relief requested pursuant to 28 U.S.C. §§ 157 and 1334; venue
 21 before this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409(a); this matter
 22 constituting a core proceeding pursuant to 28 U.S.C. §157(b); and after due deliberation and
 23 sufficient cause appearing therefore;

24 **IT IS HEREBY ORDERED THAT:**

25 1. The Joint Motion, as modified by the Joint Reply and as set forth at the
 26 June 21 hearing on the Joint Motion, is granted.
 27

28 ¹ Terms not otherwise defined herein shall have the same meanings ascribed to them in the
 Joint Motion.

1 2. All responses and oppositions to the Joint Motion that have not been
 2 withdrawn, waived, or settled, including all reservations of rights included therein, which are not
 3 otherwise resolved in this Order, are overruled on the merits.

4 3. For purposes of this Order and the procedures set forth herein, "Debtor
 5 Confidential Information" shall mean information provided by or on behalf of the Debtors that
 6 constitutes proprietary information or trade secrets or contains non-public information
 7 concerning the Debtors' business operation, projections, analyses, compilations, studies prepared
 8 by the Debtors or their advisors, but would also specifically include: (a) real property appraisals
 9 prepared by Hilco Real Estate LLC ("Hilco") and summaries of such appraisals;² (b) information
 10 or documentation related to the Debtors' negotiations with borrowers regarding loans serviced by
 11 the Debtors; c) information or documentation related to the Debtors' negotiations with the
 12 Committees regarding any plans of reorganization or other sensitive case issues; (d) information
 13 or documentation related to evaluating and litigating potential causes of action on behalf of one
 14 or more of the Debtors' estates; (e) any notes, summaries, compilations, memoranda, or similar
 15 written materials disclosing or discussing Confidential Information and (f) any written or oral
 16 Confidential Information that is discussed or presented orally.

17 4. For purposes of this Order and the procedures set forth herein,
 18 "Committee Confidential Information" shall mean (a) actions, deliberations, and discussions of
 19 any of the Committees, (b) information or analyses prepared by any of the Committees or their
 20 respective retained professionals, and (c) minutes of any of the Committees' meetings. For
 21 purposes of this Order and the procedures set forth herein, "Confidential Information" shall mean
 22 Committee Confidential Information jointly with Debtor Confidential Information.

23 5. Notwithstanding the foregoing, Confidential Information shall not include
 24 any information or portions of information that: (i) is or becomes generally available to the
 25 public or is or becomes available to any of the Committees on an non-confidential basis, in each

27 2 With respect to appraisals prepared by Hilco, such appraisals and summaries may be shared
 28 with Direct Lenders and investors in USA First and USA Diversified, so long as the Direct
 Lent or investor with whom the appraisal summary is being shared enters into a
 confidentiality agreement with the Debtors.

1 case to the extent that such information became so available other than by a violation of a
 2 contractual, legal, or fiduciary obligation to the Debtors or any of the Committees; (ii) was in the
 3 possession of the recipient Committee(s) prior to its disclosure by the Debtors or the disclosing
 4 Committee(s), and is not subject to any other duty or obligation to maintain confidentiality; or
 5 (iii) information that lawfully becomes available to the Committees or their respective retained
 6 professionals both on a nonconfidential basis and through a means other than a breach of either a
 7 Committee confidentiality agreement or any other confidentiality agreement.

8 6. For purposes of this Order and the procedures set forth herein, Privileged
 9 Information shall mean information subject to the attorney-client, the work-product privilege, or
 10 some other state, federal, or other jurisdictional law privilege, whether such privilege is solely
 11 controlled by the committee or is a joint privilege with the debtor or some other party.

12 7. Section 1102(b)(3)(A) of the Bankruptcy Code does not require the
 13 Committees to provide access to Confidential Information to their respective constituencies.

14 8. The Committees are not required to provide access to Privileged
 15 Information to their respective constituencies.

16 9. The Committees, their individual members, and their respective
 17 representatives, advisors, and counsel are determined to be in compliance with sections
 18 1102(b)(3)(A) and (B) of the Bankruptcy Code by establishing and maintaining the following
 19 information protocol (the "Information Protocol"):

20 a. Access to Information: In satisfaction of the Committees' obligations to
 21 provide access to information to and to solicit and receive comments from persons
 22 that hold claims or interests of a type the Committees respectively represent in
 23 accordance with 11 U.S.C. § 1102(b)(3)(A) and (B), each of the Committees
 24 shall, until the earliest to occur of dissolution of that Committee, dismissal of the
 25 Chapter 11 Cases, or conversion of the Chapter 11 Cases, establish and maintain
 26 an Internet-accessed website³ (collectively, the "Committee Websites") that either
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28 3 In the alternative, one or more of the Committees may create a single website containing
 information common to all creditors, equity security holders, and Direct Lenders, and, in

1 directly or by link provides, without limitation:

2 (1) a link to the Debtors' website, at which general
3 information concerning the Chapter 11 Cases, including
4 case dockets, access to docket filings, the claims docket as
5 and when established, answers to frequently asked
questions, and general information concerning significant
parties in the cases, is available;

6 (2) contact information for the Debtors (and any hotlines
7 they may establish), the Debtors' counsel and counsel for
each of the Committees;

8 (3) a general overview of the chapter 11 reorganization
9 process;

10 (4) no less frequently than monthly, written reports by the
11 Committee summarizing recent proceedings, significant
events, and public financial information;

12 (5) a calendar of upcoming significant events in the
13 Chapter 11 Cases;

14 (6) copies of monthly operating reports filed by the
15 Debtors;

16 (7) when appropriate, a copy of any plan or reorganization
17 and disclosure statement, and any voting deadline(s);

18 (8) press releases (if any) issued by each of the Committees
and/or the Debtors;

19 (9) establish and maintain an electronic mail address
20 through which individuals of the Committee's respective
21 constituency may submit questions, comments, and
22 requests for more information and, in addition, create a
23 non-public form that individuals of the Committee's
24 respective constituency may access to submit questions,
comments, and request for more information that will be
sent to such electronic mail address;

25 (10) responses to questions, comments and requests for
26 access to information from the Committee's respective
constituency; provided that the Committee may privately

27
28 addition, each Committee will maintain its own website which will provide such Committee's
constituency with access to information particular to that Committee.

1 provide such responses in the exercise of its reasonable
 2 discretion, including in the light of the nature of the
 3 information request and agreements to appropriate
 4 confidentiality and trading constraints;

5 (11) answers to frequently asked questions;

6 (12) links to other relevant websites, including but not
 7 limited to other Committee Websites (to the extent that
 8 such websites are available publicly), the Bankruptcy
 9 Court's website, and the U.S. Trustee's website; and

10 (13) any other non-Confidential and non-Privileged
 11 Information, as defined herein, that the Committee or its
 12 counsel, at their sole discretion, deem appropriate to the
 13 restrictions and limitations set forth herein.

14 Notwithstanding any construction of section 1102(b) of the Bankruptcy Code
 15 and in light of the following Information Protocol, the individual members of each of
 16 the Committees shall not be required to, but may in their discretion, respond to any
 17 telephone calls, facsimiles, email communications, correspondence, or other
 18 communications from the Committees' respective constituencies.

19 b. Privileged and Confidential Information: A Committee shall not be
 20 required to disseminate to any entity (all references to "entity" herein shall be
 21 defined in section 101(15) of the Bankruptcy Code, "Entity") without further
 22 order of the Court: (i) Confidential Information or Privileged Information; or (ii)
 23 any other information if the effect of such disclosure would constitute a waiver of
 24 the attorney-client, work-product, or other applicable privilege possessed by such
 25 Committee.

26 c. Information Requests: If a member of a Committee's constituency (the
 27 "Requesting Constituent") submits a written request (including on the non-public
 28 forms or by electronic mail) (the "Information Request") to the appropriate
 Committee to disclose information, such Committee shall, as soon as practicable
 and using its best efforts to respond no more than twenty (20) days after receipt of
 the Information Request, provide a response to the Information Request (the

"Response"), including providing access to the information requested or the reasons why the Committee cannot provide such requested information. If the Response is to deny the Information Request because the Committee believes the Information Request implicates Confidential Information or Privileged Information that need not be disclosed pursuant to the terms of a Court order or otherwise under 11 U.S.C. § 1102(b)(3)(A), or that the Information Request is unduly burdensome, the Requesting Constituent may, after a good faith effort to meet and confer with an authorized representative of the Committee regarding the Information Request and the Response, seek to compel such disclosure for cause pursuant to a motion. Such motion shall be served and hearing on such motion shall be noticed pursuant to the Case Management Order.

In its Response to an Information Request for access to Confidential Information or Privileged Information, an Committee shall consider whether (a) the Requesting Constituent is willing to agree to reasonable confidentiality and trading restrictions with respect to such Confidential Information or Privileged Information and represents that such trading restrictions and any information-screening process complies with securities laws (if applicable); and (b) under the particular facts, such agreement and any information-screening process that it implements will reasonably protect the confidentiality of such information; provided, however, that if the Committee elects to provide access to the Confidential Information or Privileged Information on the basis of such confidentiality and trading restrictions, the Committee shall have no responsibility for the Requesting Constituent's compliance with, or liability for violation of, applicable securities or other laws. Except as provided in paragraph 9(d), Confidential Information and/or Privileged Information that is protected under this order or a protective order may only be provided to a constituent of a Committee if such constituent agrees to enter into a confidentiality agreement relating to that information and further agrees to take any other necessary action

1 to protect the confidentiality of the information the constituent receives. Any
 2 disputes with respect to this paragraph shall be resolved as provided in the
 3 preceding paragraph.

4 d. Limitation on Access to Information: Nothing set forth herein requires a
 5 Committee to provide access to information or solicit comments from any person
 6 or entity that has not demonstrated to the satisfaction of such Committee, in its
 7 sole discretion, or the Bankruptcy Court, that it holds an equity security interest,
 8 claim, and/or is a Direct Lender in connection with the appropriate Debtor.

9 Likewise, nothing herein shall prejudice the rights of the Committees, in
 10 their sole discretion, to: (i) provide access to information to their constituency, or
 11 (ii) solicit and receive comments from their respective constituents, unless the
 12 information to be provided is Debtor Confidential Information or was obtained
 13 pursuant to a privilege agreement with the Debtors.

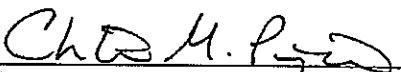
14 e. Exculpation: None of the Debtors, the Committees or any of their
 15 respective directors, officers, employees, members, attorneys, consultants,
 16 advisors, and agents (acting in such capacity) (collectively, the "Exculpated
 17 Parties") shall have or incur any liability to any entity (including the Debtors) for
 18 any act taken or omitted to be taken connection with the preparation,
 19 dissemination, or implementation of the Information Protocol, the Committee
 20 Websites, and other information to be provided pursuant to section 1102(b)(3) of
 21 the Bankruptcy Code; provided, however, that the foregoing shall not affect the
 22 liability of any Exculpated Party protected pursuant to this paragraph 9(e) that
 23 otherwise would result from any such act or omission to the extent that such act or
 24 omission is determined in a final non-appealable order to have constituted a
 25 breach of fiduciary duty, gross negligence, or willful misconduct, including,
 26 without limitation, fraud and criminal misconduct, or the breach of any
 27 confidentiality agreement or Order. Without limiting the foregoing, the
 28 exculpation provided in this paragraph shall be coextensive with any Exculpated

1 Party's qualified immunity under applicable law.

2 f. Retroactivity. Any conduct taken by any of the Committees since their
3 inception that is consistent with the relief sought herein shall be ratified by the
4 entry of the requested order.

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6 SUBMITTED BY:

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1 Party's qualified immunity under applicable law.

2 f. Retroactivity. Any conduct taken by any of the Committees since their
3 inception that is consistent with the relief sought herein shall be ratified by the
4 entry of the requested order.

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3 inception that is consistent with the relief sought herein shall be ratified by the
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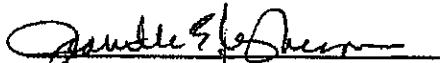
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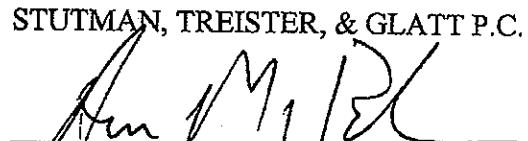
1 **RULE 9021 DECLARATION**
2

In accordance with Local Rule 9021, the undersigned certifies:

3 The Court waived the requirements of LR 9021.
4
5 I have delivered a copy of proposed order to all attorneys and unrepresented parties
6 who appeared at the hearing regarding this matter and/or who filed a written
7 objection and each has:
8
9 approved the form of this order;
10 waived the right to review this order; and/or
11 failed to file and serve papers in accordance with LR 9021(c).
12
13 I have delivered a copy of this proposed order to all attorneys and unrepresented
14 parties who appeared at the hearing regarding this matter and/or who filed a written
15 objection and all have either approved the form of this order, waived the right to
16 review the order, failed to file and serve papers in accordance with LR 9021(c) and
17 the following have disapproved the order:
18
19 No opposition was filed to the motion and no other party or counsel appeared at the
20 hearing.

DATED this 23rd day of June, 2006.

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